IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

1) Case No. : Crl. Appeal No.30-SB of 1994
Date of Decision : March 12, 2007.

Narain Ram and another ..... Appellants

Vs.

State of Punjab ..... Respondent

2) Case No. : Crl. Revn. No.196 of 1994
Date of Decision : March 12, 2007.

Ved Parkash ..... Petitioner

Vs.

Narain Ram and another ..... Respondents

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Mr.Bipan Ghai, Advocate
for the appellants (in Crl.Appeal No.30-SB of 1994)
for the respondents (in Crl.Revn. No.196 of 1994)

Mr.Ashutosh Hoshiarpuri, AAG, Punjab.

Mr.A.P.S.Deol, Advocate
for the complainant (in Crl.Appeal No.30-SB of 1994)
for the petitioner (in Crl.Revn. No.196 of 1994)

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MAHESH GROVER, J. (Oral) :

This order will dispose of abovesaid Crl.Appeal No.30-SB of 1994 as also Crl.Revn. No.196 of 1994.

Appellant Narain Ram and Indra Devi were sent up to stand

trial for having committed offence under Section 304-B IPC and the trial court, after finding them guilty, sentenced them to undergo imprisonment of seven years as follows :-

"Sr.No.	***Under Section***	***Imprisonment***
1.	*304-B IPC*	*R.I. of 7 years and a fine of Rs.100/-. The period of detention undergone by the accused in this case shall be set off against the period of imprisonment imposed upon the accused in this case."*

The deceased Naresh Kumari alias Baby was married to Narain Ram o n 25.8.1991 and according to the prosecution version, she lost her life within ten months of her marriage i.e. on 1.7.1992 when her father could not satiate the desires of the appellants for bringing more dowry and resultantly, she was poisoned to death.

The complaint was lodged by the father of the deceased wherein it was stated that the demands of dowry had been made upon him for giving fridge etc. and since the same could not be made, Naresh Kumari was done to death.

On 1.7.1992, when the death is stated to have occurred, Ruqa was sent by Dr.Rajinder Garg, at about 2:40 A.M., to Police Station Sadar, Mansa whereupon Baldev Singh, ASI reached the Civil Hospital. There the complainant Ved Parkash also reached. The police, after carrying out the necessary procedure, prepared two parcels – one containing the gold ornaments and the other containing the clothes of the deceased which were taken into possession vide memo dated Ex.P-J.

On 2.7.1992, a Board of doctors conducted post-mortem on the dead body of the deceased and the various organs were separately sent for chemical analysis. It was found that the deceased had died on account of poisoning and a carbamate group of insectisides was detected. Ex.P-E is the report of the Chemical Examiner to that effect.

The police, after completing its investigation, submitted a challan under Section 173 Cr.P.C. and the case was committed to the court of Sessions for trial, on 24.10.1992.

The prosecution, in order to establish the case, examined as many as seven witnesses.

The appellants denied the allegations levelled against them and stated that they had never subjected the deceased to maltreatment and never raised any demand of dowry. They further stated that on the fateful intervening night of 30.06.1992 and 01.07.1992, Naresh Kumari fell ill and they along with the elder brother of Narain Ram and Jaswant Singh-mediator and other respected members of the village took her in tractor-trolly to Civil Hospital, Mansa and while she was being removed from the trolly in the hospital, she breathed her last. The present proceedings were initiated as the complainant wanted to extract money from them. One Jaswant Singh, the alleged mediator was produced as a defence witness.

The trial court, after appraisal of the evidence before it, went on to convict the appellants and sentenced them to various periods of imprisonment as detailed above.

The appellants have assailed the aforesaid conviction and sentence awarded to them vide judgment dated 24.12.1993 by way of the present appeal.

At the outset, it was contended by the learned counsel for the appellants that the appellant-Indra Devi was aged about 65 years at the time when the charge was framed in the year 1992 and as on today, she is an old and poor lady of about 80 years and further that she has already undergone a period of one year and ten months approximately, while the other appellant-Narain Ram has undergone 2 years, 5 months and 17 days of conviction out of total of seven years awarded to him.

That apart, it has been contended by him that taking the allegations in the FIR and the evidence in its totality, no case under Section

304-B would be said to have been made out against the appellants because there were no immediate demands of dowry made upon the deceased and the family members, which is one of the pre-requisites for attracting the aforesaid provision of law.

That apart, it has been contended that the lodging of the FIR does not inspire any evidence because of the reason that the version put forward that Surinder Kumar-brother of the deceased who is posted at Jalandhar, came to Kotli and then went back to Mansa to bring back Ved Parkash and thereafter FIR was lodged. Even though the family members were residing at Mansa, yet the FIR was lodged by Ved Parkash after Surinder Kumar, brother who was posted at Jalandhar, had reached there.

The aforesaid contentions were sought to be refuted by the learned counsel appearing for the State as also the complainant who contended that the team of doctors categorically established the cause of death on account of poisoning which took place within a short span of ten months of the marriage.

Besides, there were specific allegations of demands of dowry which have been reflected in the FIR. That apart, the deceased was pregnant and was carrying a foetus of seven months.

I have heard the learned counsel for the parties and have gone through the record.

Concededly, the death took place within ten months of the marriage. The presumption of law as raised in Section 304-B is straightway attracted which has to be refuted by bringing on record cogent evidence.

The plea of the learned counsel for the appellants, that there were no immediate demands of dowry, does not cut much ice for the reason that the period intervening the marriage and the death is too small. The interregnum between the marriage and the death being just 10 months, would reduce any demand for dowry made to, as an immediate demand of dowry. The immediate demand need not mean a period which is to be

measured in hours and days, but has to be inferred from facts to see if it forms the umbilical cord between the demand made and the offence committed. The period between the marriage and the death being of a short duration, with demands of dowry interspersed in between the requisites of Section 304-B would adequately be attracted.

It was then sought to be contended by the learned counsel appearing for the appellants that even if the allegations and the evidence are considered in their entirety, no case is made out against Indra Devi.

The contention of the learned counsel for the appellants is not misplaced. No specific allegations have been made in the FIR qua her and neither has any evidence been led to establish her role in the commission of the offence. At best, it could be said that she was guilty of maltreating the deceased which would, at best, invite a conviction under Section 498-A. Consequently, her conviction is directed to be converted under Section 498-A. Her conviction under Section 304-B is accordingly set aside.

Keeping in view her age and the period of sentence that she has already undergone, her sentence is reduced to already undergone.

The appellant Narain Ram, however, cannot escape the responsibility of the death of his wife. He, being the spouse, has to inevitably bear brunt brunt of allegations supported by the consequent evidence against him.

Appeal qua Narain Ram is, consequently, dismissed. The sentence maintained.

The revision petition i.e. Crl.Revn. No.196 of 1994, which has been filed by Ved Parkash, for enhancement of sentence, is dismissed.

March 12, 2007 **(MAHESH GROVER)**
monika **JUDGE**